

**IN THE UNITED STATES DISTRICT COURT  
OF THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**ICON HEALTH & FITNESS, INC.,**  
**a Delaware Corporation**  
**Plaintiff**

**V.**

**HORIZON FITNESS, INC. et al.,**  
**Defendants**

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**No. 5:08CV26**

**ORDER**

Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for Assignment of Duties to United States Magistrate Judges, Plaintiff ICON Health & Fitness, Inc.'s Motion to Dismiss Count III, Count IV, Count VIII, and Count X from True Fitness Technology, In c.'s Amended Answer to First Amended Complaint for Patent Infringement and Counterclaim (Docket Entry # 165), dated May 7, 2009, was referred to the undersigned for the purpose of preparing a report and recommendation. On May 11, 2009, Defendant True Fitness Technology, Inc. filed an Amended Answer to Plaintiff's First Amended Complaint (Docket Entry # 168). On May 18, Plaintiff filed an amended Motion to Dismiss Count III, Count IV, Count VIII, and Count X from True Fitness Technology, In c.'s Amended Answer to First Amended Complaint for Patent Infringement and Counterclaim (Docket Entry # 171). Based on the filing of Plaintiffs' amended motion, the Court is of the opinion the original motion to dismiss should be **DENIED AS MOOT**. Accordingly, it is

**ORDERED** that Plaintiff ICON Health & Fitness, Inc.'s Motion to Dismiss Count III, Count IV, Count VIII, and Count X from True Fitness Technology, In c.'s Amended Answer to First

Amended Complaint for Patent Infringement and Counterclaim (Docket Entry # 165) is hereby  
**DENIED AS MOOT.**

**SIGNED this 21st day of August, 2009.**

  
CAROLINE M. CRAVEN  
UNITED STATES MAGISTRATE JUDGE